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NOTES OF CASES.

Corporations—Property and Books—Right of Director to Examine.—Each member of the board of directors of a private corporation, as held in *State v. Grymes*, 64 S. E. 728 (Supreme Court of Appeals of West Virginia, April 20, 1909), is clothed by law with equal rights and powers, and each has a right, at all reasonable times, to make an investigation of the property and funds, books, correspondence, and papers of his corporation, which are in the possession of its agent or general manager, and to make copies thereof for his own information as such director; and the right conferred by general law on an individual director to make such investigation is not abrogated by § 2276 of the Code of 1906.

Deeds—Mental Capacity—Presumptions and Burden of Proof.—It is held in *Towner v. Towner*, 64 S. E. 732 (Supreme Court of Appeals of West Virginia, April 20, 1909), that mental incompetency is presumed in respect to a deed executed by a person after he has been adjudged insane and before his discharge from the hospital in which he was confined, although, at the time of its execution, he was at home, under a permission or furlough, given by the hospital authorities; and the burden of proof is on the grantee to prove it was executed in a lucid interval; and to sustain a deed as having been executed in a lucid interval the proof must be clear, going to the mental state and habit of the grantor, not merely to an accidental interview, or the degree of self-possession in a particular act. It must show the power and restriction of mind deemed necessary in general to the disposition and management of affairs.

Frauds, Statute of—Modification of Contract—Specific Performance.—A contract for sale of coal provides that part of the purchase money shall be paid by a given day, when the vendor is to make a deed, and that, if not so paid, the contract shall be void, and declares this provision for payment of the essence, and there is default in such payment. It is held in *Thompson v. Robinson*, 64 S. E. 718 (Supreme Court of Appeals of West Virginia, April 20, 1909), that no oral extension of time made after that day will bind the vendor; a defunct contract for the sale of realty cannot be revived by an oral contract; and if a contract for sale of land demands payment of purchase money by a given day, and declares this provision of the essence, and if not complied with the contract to be void, deed to be made on such payment, the vendee must pay or tender the money on the day, and thus put the vendor in default, else the vendee cannot have specific performance.

The recent case of *Powell v. Hemsley*, in which the Court of Appeal upheld the decision of Mr. Justice Eve, shows how extremely difficult it is to frame a restrictive covenant relating to a building estate so as to cover even reasonably probable contingencies. Lenton Hall Estate, Nottingham, was being laid out as a building estate, and in June, 1904, part of the vacant land was conveyed in fee to the defendant, who covenanted "for himself, his executors, administrators, and assigns" with his vendor, "his heirs, executors, administrators, and assigns," not to erect houses of other than a certain class to be approved by the vendor. In November, 1904, Lenton Hall itself was conveyed away by the vendor. In 1906 the defendant granted a building lease of part of his land to two builders, who forthwith proceeded to erect houses not approved by the original vendor and in breach of the restrictive covenant. The builders then became bankrupt, and the trustee in bankruptcy disclaimed the lease granted by the defendant. Subsequently, in 1907, Lenton Hall was conveyed to the plaintiff, together with the benefit of all covenants entered into by purchasers of the Lenton Hall Estate. The plaintiff then brought the present action to restrain the defendant from erecting the houses and for an order directing him to pull them down. At first blush the plaintiff's claim seems reasonable enough. He was an assign of the original vendor, the houses had been erected in breach of the covenant and by an assign of the defendant, and the defendant was now the owner and in possession of the land on which the houses stood. The plaintiff, however, failed to substantiate his claim, and was held to be entitled to no relief against the defendant either at law or in equity. The merits of the defendant were considerable, inasmuch as he was not in the least degree responsible either for the breach of covenant or for the disclaimer of the lease. The Court of Appeal assumed, in favour of the plaintiff, that the words "he would erect" meant "the covenantor himself, his executors, administrators, and assigns would erect," but held that the case was not covered by the covenant as events had fallen out. The restrictive covenant had been broken once for all before Lenton Hall was conveyed to the plaintiff, and there had been no continuing breach; the conveyance to the plaintiff, though giving him the benefit of the defendant's covenants, did not purport to be an assignment of any right to damages for past breaches. The case is, as the Master of the Rolls said, "undoubtedly a curious one," and should lead conveyancers to scan with some care their common forms of restrictive covenants relating to building estates. The bankruptcy of builders is not, after all, such a very rare event, and the right to take advantage of past breaches of covenant can, and should, be conferred by apt words where land is purchased which is in process of development.